

Bench Card for Iowa Judges: Tips for Effectively Working with Language Interpreters in the Courtroom

A. How Does a Judge Know if a Party or Witness Needs an Interpreter?

A judge should almost always appoint an interpreter if a self-represented party or an attorney (on behalf of a client) asserts the need for an interpreter. If a party or witness appears to have difficulty understanding English, but does not request an interpreter, a judge should ask the person questions on the record to determine if an interpreter is necessary. Generally, ask questions that require an explanation; avoid questions easily answered with "yes" or "no." For example:

- ◆ For how many years have you spoken English?
- ◆ How did you learn English?
- ◆ Describe some of the things you see in this courtroom.
- ◆ Tell me about your favorite television program.

After asking these questions, if you have any doubt about the person's ability to understand English, you should appoint an interpreter.

B. What are the Qualities of a Competent Court Interpreter?

Being bilingual is not sufficient to qualify a person to interpret in court. A competent court interpreter is able to completely and accurately interpret everything said in court, without adding or omitting words or summarizing statements. To meet this high standard, a court interpreter should have:

- ◆ College-level vocabularies in both languages, including legal terms & slang
- ◆ Excellent short-term memory skills
- ◆ Exceptional mental and verbal agility
- ◆ At least some training and experience
- ◆ Knowledge and understanding of the Code of Professional Conduct for Judicial Branch Interpreters (see ICR 47.1(1)(d)).

Remember: The stakes can be high. Errors in interpretation can lead to an unjust outcome.

→ Language Line interpreter services (via telephone) can be used, but should be limited to short proceedings (e.g., initial appearances).

C. Who Will Locate a Court Interpreter?

The court may not require a person to bring her or his own interpreter. Court staff shall select an interpreter when one is needed. (See ICR 47.2.)

D. Iowa Court Rules on Appointment of Interpreters

Under ICR 47.6, the court must appoint an interpreter with the highest classification among those who are reasonably available (i.e., interpreters who are able to be in court at the scheduled time; the cost of the interpreter is not a factor in determining availability). The order of priority is:

- ◆ Class A – Certified
- ◆ Class B – On the Roster and meets more than minimum Roster requirements
- ◆ Class C – On the Roster
- ◆ Not on the Roster [Last resort only]

Note: Being on the Roster of Court Interpreters is not a guarantee that the person is a good interpreter. To get on the Roster, a person must meet two very minimal requirements: attend a two-day orientation program and pass a multiple-choice exam (135 questions in English) on general vocabulary, slang, and legal terms. Only certified interpreters have passed a rigorous exam of interpreting performance. Therefore, when a noncertified interpreter appears in court and is unknown to the judge, the judge should establish the person's qualifications to be a court interpreter:

E. Questions for Noncertified Interpreters

- Are you a certified court interpreter?
 - Are you on the Roster of Court Interpreters?
If no: Why not?
 - How many years have you spoken English?
 - How did you learn English?
 - How long have you spoken [the other language]?
 - How did you learn [the other language]?
 - Do you have a college degree?
If no: How much formal education have you had? [Remember: A court interpreter needs a college-level vocabulary.]
If yes: Where did you go to college?
 - What special training or credentials do you have as an interpreter?
 - Do you know the Code of Professional Conduct for Judicial Branch Interpreters [Chap. 48, Iowa Court Rules]?
If no: – [The person should not be appointed; see ICR 47.1(1)(d).]
If yes: What are some of the key Canons in the Code of Professional Conduct?
 - How many times have you interpreted in court?
 - How familiar are you with legal terms?
 - Do you know anyone involved in this case?
- [Note: Judges should not appoint an interpreter who could be biased; e.g., a friend or family member; nor a domestic abuse advocate or attorney -- if either has a client in court.]

F. Interpreter Oath

If you find an interpreter to be qualified, read this:

"I find that you are qualified to be the interpreter for these proceedings and appoint you to be the interpreter. You must now take an oath:

[Interpreter Oath]: "Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the Code of Professional Conduct for Judicial Branch Interpreters?"

G. How a Judge Can Facilitate an Interpreted Proceeding

1. Recognize that court proceedings can be confusing and intimidating for a non-English speaker since other countries' legal systems and laws often vary from those of the U.S.
2. Allow an interpreter to view court files prior to the proceedings to become familiar with names, parties, and technical vocabulary.
3. If a proceeding will last longer than four hours, the court probably should appoint two interpreters. (*Research shows interpreter accuracy declines after about 25 minutes of continuous interpreting. Also see ICR 47.2.*) When only one interpreter is used, the court should schedule breaks every 30 minutes.
4. Before a hearing begins, allow the interpreter to converse briefly with the non-English speaker to ensure the interpreter understands the accent, dialect, or pronunciation of the non-English speaker. (*This is the only exception to K.2, below.*)
5. Ask the non-English speaker if he/she is able to understand and communicate with the interpreter.

H. Suggested Instructions to Everyone in Court When an Interpreter is Involved

"This proceeding will require a court interpreter. Please follow these instructions:

1. The interpreter's only role in court is to interpret what is said in court. An interpreter may *not* explain anything – nor give advice.
2. The interpreter shall interpret everything, without adding, omitting, or summarizing.
3. The interpreter shall interpret in the same grammatical person as the speaker. For example, if a witness says: "I saw a red car" you will interpret it as "I saw a red car" – not "He said he saw a red car."
4. Attorneys: you should speak loudly, clearly, and somewhat more slowly than normal.
5. When questioning a witness who needs an interpreter, attorneys should speak directly to the witness, not to the interpreter.
6. Finally, only one person may speak at a time.
7. Does anyone have any questions?"

I. Suggested Instructions to a Witness Who Does Not Speak English:

- ♦ "I want you to understand the role of the interpreter. The court interpreter is here to interpret – so you can understand what is said in court and to help us understand what you say.
- ♦ The interpreter will interpret *everything* you say in court -- without adding or omitting anything.
- ♦ Do not ask the interpreter to explain or restate a question. Speak directly to the person who asked the question and ask that person to restate or explain the question.
- ♦ When answering a question, you should speak directly to the person who asked you the question, not to the interpreter.
- ♦ Wait until the interpreter finishes interpreting a question before you answer.
- ♦ Do you have any questions?"

J. Suggested Instructions to a Jury Regarding Interpreted Testimony

"A language other than English will be used during this trial. If a witness's testimony requires an interpreter, you are to consider only what you hear through the official court interpreter. Some of you may understand the non-English language used in court. However, it is important for all jurors to consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must not rely in any way upon your own interpretation of the witness's words. Do you have any questions?"

K. Observe Interpreters During Hearings

1. If an interpreter is continuously interpreting for a defendant or party (while sitting near the party at the litigant's table) – and someone is speaking in the courtroom – the interpreter should be interpreting (her/his mouth should be moving). *If not – interrupt the hearing and tell the interpreter to interpret everything!*
2. There should never be a dialogue in court between an interpreter and the person needing the interpreter. (*Exception: see G.4.*) The interpreter is probably explaining something or giving advice.

L. Interpreters for Indigent Persons

The State Public Defender's Office pays for interpreters in criminal cases with an indigent defendant. The court will appoint and pay for interpreters needed by indigent parties involved in all other types of cases (out of the jury & witness fund), and tax the fees as costs in the case.